



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
On the Twenty-Sixth day of July, 2010

Comair, Inc.

**Violations of 14 CFR Part 250 and 49 U.S.C.
§§ 41708 and 41712**

Docket OST 2010-0005

Served July 26, 2010

CONSENT ORDER

This consent order concerns violations by Comair, Inc., (Comair)¹ of the Department's oversales rule (14 CFR Part 250), the statutory provision requiring carriers to report oversales and other data to the Department (49 U.S.C. § 41708), and the statutory prohibition against engaging in unfair and deceptive practices by air carriers and ticket agents (49 U.S.C. § 41712). The violations stem from the carrier's failures on oversold flights to 1) solicit volunteers to give up their seats before denying boarding to passengers against their will, 2) provide passengers who were involuntarily denied boarding with the appropriate amount and type of denied boarding compensation (DBC) in a timely manner, and 3) file required reports accurately stating the total numbers of passengers who were involuntarily denied boarding. The order directs Comair to cease and desist from such further violations and assesses a civil penalty of \$275,000.²

The Department's oversales rule reflects a carefully crafted balance between the right of individual passengers to obtain the services they purchase and the ability of carriers to market their services effectively. Part 250 permits airlines to sell more tickets for a flight than there are seats on the aircraft to be used for that flight. This allows carriers to fill seats that would otherwise have gone empty due to "no shows," thereby resulting in efficiencies for carriers, including revenue enhancement, and benefits for passengers as a whole by enabling carriers to offer them lower fares.

¹ Comair, Inc., is a wholly owned subsidiary of Delta Air Lines, Inc., (Delta).

² This order is a global settlement of all oversales-related violations through the date of this order by Comair, Delta, and all of Delta's subsidiaries and affiliates, including any oversales-related violations that may have accrued to Delta as the successor-in-interest following its merger with Northwest Airlines, Inc.

In exchange for the ability to overbook flights (a practice that would otherwise be unfair and deceptive or an unfair method of competition within the meaning of 49 U.S.C. § 41712), the rule mandates compensation and other protections for passengers who hold “confirmed reserved space” on a flight, have complied with the carrier’s contract of carriage, have met the carrier’s requirements with respect to check-in time and appearance at the gate, and have been involuntarily denied boarding of their flight because it was oversold (“eligible passengers”). Specifically, under most circumstances, Part 250 mandates that a carrier pay DBC to eligible passengers. However, before denying boarding to passengers against their will, the carrier must first solicit volunteers who are willing to give up their seats in exchange for compensation.³ If there are not enough volunteers, the carrier may deny boarding to other passengers against their will, provided *inter alia* “on the day and [at the] place the denied boarding occurs,” the carrier pays all eligible passengers with “cash or an immediately negotiable check for the appropriate amount of compensation.”⁴ The appropriate amount of DBC varies for each passenger depending on the planned time of arrival at his or her destination of substitute transportation arranged (or offered to be arranged) by the carrier, the value of the unused portion of the passenger’s ticket to his or her destination, and whether the flight segment on which the bumping occurred was between U.S. points, or from the U.S. to a foreign point.⁵

Although Part 250 permits a carrier to offer free or reduced rate air transportation in the form of travel vouchers for use on future flights in lieu of a cash payment, the carrier must first “[inform] the passenger of the amount of cash compensation that would otherwise be due and that the passenger may decline the transportation benefit and receive the cash payment.”⁶ In other words, the carrier must apprise eligible passengers of their entitlement to cash/check compensation and the amount thereof in the event he or she prefers that form of compensation instead of a travel voucher. In order to ensure that these passengers have the ability to make informed decisions regarding the various DBC options available to them, a carrier is required to furnish them with a written statement, the text of which is specified in the rule, that explains the terms, conditions, and limitations of denied boarding compensation.⁷ Violations of Part 250 also constitute

³ 14 CFR 250.2b(a).

⁴ 14 CFR 250.8(a). Offering or providing passengers denied boarding compensation does not relieve carriers from their obligation to perform the transportation promised under their contract of carriage with passengers. Therefore, in addition to receiving DBC, eligible passengers are entitled to keep their original ticket and use it on another flight. In the alternative, if eligible passengers choose to make their own arrangements, they can request an “involuntary refund” for the ticket for the flight from which they were bumped. DBC is a separate right and is intended to compensate passengers for their inconvenience. Part 250 makes clear that passengers are free to decline the DBC required under the rule and bring a private legal action.

⁵ 14 CFR 250.5(a).

⁶ 14 CFR 250.5(b).

⁷ 14 CFR 250.9(a).

unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712.

In addition, 14 CFR 250.10 requires carriers to file quarterly reports with the Department's Bureau of Transportation Statistics (BTS Form 251) listing *inter alia* the number of passengers denied boarding involuntarily and the number of passengers who volunteered to give up their seats. These numbers are then published and made available to the public in the Department's monthly *Air Travel Consumer Report* (ATCR), which ranks carriers according to their rate of involuntary denied boardings.⁸ ATCR data may be used by members of the traveling public when choosing among transportation options and by carriers as a basis for making advertising claims regarding the quality of their service compared to other carriers. It is imperative, therefore, that ATCR data be accurate. Violations of section 250.10 also constitute violations of 49 U.S.C. § 41708.

Based on concerns arising from consumer complaints filed with the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office), that office began an investigation of Comair's compliance with Part 250. That investigation involved a review of information regarding consumer complaints involving Part 250 sent directly to Comair as well as a comprehensive inspection at Comair's headquarters of the airline's consumer complaint records, practices, and policies involving Part 250. This investigation revealed numerous instances in which Comair denied boarding to passengers, but did not follow one or more of the requirements of Part 250, as outlined above, including instances in which Comair classified passengers who were involuntarily denied boarding as having volunteered to give up their seats. These failures violated Part 250 and constituted unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. The failures that involved violations of the reporting requirement of 14 CFR 250.10 also violated 49 U.S.C. § 41708. The Enforcement Office views the violations uncovered during its investigation as indicative of a general pattern of noncompliance by Comair that must be rectified.

In mitigation, Comair states it strives not only to comply fully with DOT consumer regulations, but to exceed DOT mandates in many areas to make the travel experience as convenient and enjoyable as possible. Comair uses the software, hardware, and procedures of its parent Delta Air Lines for handling oversale situations and denied boarding compensation. Comair and Delta have invested substantial financial and human resources capital in a continuing effort to ensure compliance with 14 CFR Part 250, including improved training and enhanced tools to simplify the process for agents in such situations. Included in this effort was the development and implementation of a tool that allows denied boarding compensation to be accurately determined and generates a notification coupon that meets the notice requirements under Part 250. Comair states that, although it believes enforcement action is not warranted, it has agreed to settle this matter without admitting to a violation to avoid the burden and expense of litigation.

⁸ See *Air Travel Consumer Report*, available at <http://airconsumer.dot.gov>. A carrier's rate of involuntary denied boardings is computed using its total quarterly number of involuntary denied boardings and its passenger enplanements over that period.

We have carefully considered the facts of this case, including the explanation provided by Comair, and continue to believe that enforcement action is necessary. Comair, in order to avoid litigation, and without admitting the violations described above, agrees to the issuance of this order to cease and desist from future violations of 14 CFR Part 250, 49 U.S.C. § 41708 and 49 U.S.C. § 41712. Comair further agrees to the assessment of \$275,000 in compromise of potential civil penalties otherwise assessable against it. The Enforcement Office believes that this compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and provides a strong incentive to Comair and all other airlines to comply with the Department's denied boarding regulation.

This order is issued under the authority contained in 49 CFR 1.57(a) and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of the order as being in the public interest;
2. We find that Comair, Inc., violated 14 CFR 250.2b(a), as described above, by failing to solicit volunteers before involuntarily denying boarding to passengers on oversold flights and by failing to provide promised compensation to volunteers;
3. We find that Comair, Inc., violated 14 CFR 250.8(a), as described above, by failing to tender cash or an immediately negotiable check for the appropriate amount of compensation on the day and at the place the denied boarding occurred to eligible passengers who were denied boarding involuntarily;
4. We find that Comair, Inc., violated 14 CFR 250.5(a), as described above, by failing to pay eligible passengers who were denied boarding involuntarily the appropriate amount of denied boarding compensation specified in the rule;
5. We find that Comair, Inc., violated 14 CFR 250.5(b), as described above, by failing to inform eligible passengers who were denied boarding involuntarily and who were offered travel vouchers of the amount of cash compensation that was due to them;
6. We find that Comair, Inc., violated 14 CFR 250.10, by reporting passengers as having volunteered to give up their seats, when, in fact, they were involuntarily denied boarding;
7. By engaging in the conduct described in ordering paragraphs 2, 3, 4, 5, and 6, above, we find that Comair, Inc., engaged in an unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712;

8. By engaging in the conduct described in ordering paragraph 6, above, we find that Comair, Inc., violated 49 U.S.C. § 41708;

9. We order Comair, Inc., and all other entities owned, controlled by, or under common ownership with Comair, Inc., and its parent company, Delta Air Lines, Inc., and all of its subsidiaries and affiliates, to cease and desist from further violations of 14 CFR Part 250, 49 U.S.C. §41708, and 49 U.S.C. § 41712;

10. We assess Comair, Inc., a compromise civil penalty of \$275,000 in lieu of civil penalties that might otherwise be assessed, for the violations described in ordering paragraphs 2 through 8, above. The compromise civil penalty amount shall be due and payable within thirty (30) days of the issuance of this order; and

11. Comair, Inc., shall pay or cause to be paid the assessed civil penalty by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Comair, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

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